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Weaknesses of Law Enforcement against Corporations in Criminal Acts of Corruption in Indonesia

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ABSTRACT

Corporations or legal entities from time to time increasingly have an increasingly important role in human life, can help raise large funds needed by humans, but behind that corporations can also commit a crime or criminal act. Legal Subject of Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption are Humans and Legal Entities or Corporations. Law enforcement against the two legal subjects is handled differently, the human legal subject is easier to handle but for the corporate legal subject there is a problem. The research was conducted with normative juridical research, descriptive and exploratory research. Problems that arise from law enforcement against corporations in eradicating corruption are weaknesses in their legal structure, weaknesses in legal substance, weaknesses in legal culture and weaknesses in procedural law.

I. INTRODUCTION

A corporation is a term commonly used among criminal law experts to refer to what is common in other fields of law, especially in the field of civil law, as a legal entity (Setiyono, 2002: 2 – 3). The existence of a corporation occurs as a result of the development of modernization. In ancient times, primitive or traditional societies were not known as legal entities or corporations, all activities were carried out only individually or individually. However, in its development, the need arises to carry out activities in collaboration with several people or corporations. Moreover, the demands of economic and business development in the era of the industrial revolution are increasingly broad and complex, especially the problem of limited funds for financing large industries and the problem of organizing cooperation between capital owners in carrying out economic and business activities. The existence of corporate funds from individuals can be collected or combined to finance large projects that require very large funds

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(Salman Luthan, 1994: 15).

In addition, there is a desire that the combined skills will be more successful than if they are carried out alone. It is also possible that there are certain considerations, namely being able to share the risk of losses that may arise in the joint venture. In the further development of this joint venture or corporation, does not only involve several people but can occur several hundred or even thousands of people, as is the case today with Limited Liability Companies (PT) offering their shares to the public or the public. This usually happens in Limited Liability Companies that have gone public.

At present, the development of the corporation appears to be increasingly rapid both in terms of quality, quantity and the field of business it undertakes. The corporation is engaged in various fields such as banking, transportation, communication, agriculture, forestry, marine, automotive, electronics, entertainment and so on. Almost no area of our lives is separated from corporate networks. The air we breathe, the water we drink, the food we swallow, the clothes and footwear we wear, the medicines that nourish us, the news we read, the future we plan, and even the behaviour in the bedroom is like the number of children. What they want, all of them smell like corporations, both through their products and pollution. (IS. Susanto, 1993: 5). The existence of corporations brings many benefits to society and the state, such as an increase in state treasury income from taxes and foreign exchange, creating of jobs, increased technology transfer and so on. However, in addition to the advantages or positive impacts mentioned above, the existence of corporations can also have negative impacts, such as environmental pollution (water, air, and land), exploitation or depletion of natural resources, unfair competition, and tax manipulation, exploitation of workers/labourers. , produce substandard products or defects that endanger consumers and so on. The emergence of this negative impact is caused by corporations pursuing a sizable profit.

The subject of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. As amended by Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes consisting of Humans and Legal Entities or Corporations. In the implementation of criminal law enforcement to humans as the subject of criminal acts of corruption, there are no problems, but if the perpetrator is a legal entity or corporation, criminal law enforcement has difficulties, both in legal substance and in the procedural law.

A. Problem Statement

From the description above, it can be formulated that the problems discussed are what factors cause the weakness of law enforcement against corporations in criminal acts of corruption in

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Indonesia?

B. Research Methodology

This research is normative or doctrinal juridical research, namely research that analyzes the norms or regulations that apply (Burhan Asshofa, 1996: 13) related to corruption. The data used in this study are primary data and secondary data. Primary data were obtained directly from the field using observation. However, primary data is more supportive (Ronny Hanitijo Soemitro, 1990: 9 -10), (Soerjono Soekanto, 1986: 12) as supporter of secondary data. Secondary data is the main data in this study. This research uses a statutory approach. Secondary data is data that is indirectly obtained by researchers or data that has been processed by other people, which includes (Peter Mahmud Marzuki, 2009: 141):

a. Primary legal materials:

Primary legal materials are legal materials that are binding and include regulations related to the problem under study, namely;

1) Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

2) Criminal Procedure Code.

3) Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

4) Attorney General Regulation Number PER-028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects.

b. Secondary legal material

Secondary legal materials are legal materials that explain primary legal materials, research results, works of legal experts in the form of writings and so on, which are relevant to this research.

c. Tertiary legal materials

Tertiary legal materials are legal materials that provide instructions and explanations of primary and secondary legal materials, such as legal dictionaries and encyclopedias.

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II. RESULT AND DISCUSSION

In Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. In this Law it is regulated if the perpetrators of this corruption crime involve a Corporation or Agency, see Article 20 of the Law, namely:

1. A criminal act of corruption is committed by or on behalf of a corporation, criminal charges and penalties may be made against the corporation and/or its management.
2. A criminal act of corruption is committed by a corporation if the crime is committed by people, either based on a working relationship or based on other relationships, acting within the corporate environment, either individually or jointly.
3. A criminal charge is made against a corporation, the corporation is represented by the management.
4. The management representing the corporation as referred to in paragraph (3) may be represented by another person.
5. The judge may order the management of the corporation to appear in person in court and may also order that the management be brought before a court session.
6. A criminal charge is made against a corporation, the summons to appear and the submission of the summons shall be submitted to the management at the management's place of residence or the management's office.
7. The principal punishment that can be imposed on a corporation is only a fine with a maximum sentence of 1/3 (one-third).

From the sound of Article 20 paragraph 1 of the corruption law mentioned above, it indicates that this law adheres to the position that an entity or corporation is the subject of a criminal act. Then Article 20 paragraph 2 indicates that the imposition of criminal liability on corporations adheres to the doctrine of identification and the doctrine of aggregation. The teaching of identification is contained in the sentence "if the crime is committed by people either based on work relations or based on other relationships". Then the doctrine of aggregation is contained in the sentence "if the crime is committed in a corporate environment, either alone or together".

What is meant by "people based on work relations" are people who have a working relationship as administrators or as employees, namely (Barda Nawawi Arief, 2008: 153):

1. Based on the articles of association and amendments,

2. Based on the appointment as an employee and work agreement with the corporation,
3. Based on the letter of appointment as an employee, or
4. Based on the work agreement as an employee.

Then what is meant by "people based on other relationships" are people who have relationships other than working relationships with the corporation. They include those who represent corporations to carry out legal actions for and on behalf of corporations based on (Barda Nawawi Arief, 2008: 153):

1. Granting power,
2. Based on an agreement with the grant of power of attorney (meaning the granting of power is not isolated but is included in the work agreement)'
3. Based on the delegation of authority.

Thus, what is meant by the crime can be charged with responsibility on the corporation if the crime is committed by people who have relations with the corporation, both relationships based on work relationships and those based on relationships other than work relationships. When viewed from the rules, it is clear, but even so, there are still weaknesses or obstacles or reasons why the Corporation or Agency is not or has not been processed through the Criminal Justice System (pro Justicia). Weaknesses or causes of it are:

III. WEAKNESSES IN LEGAL SUBSTANCE

According to Friedman Legal Substance is substance is composed of substantive rules and rules about how institutions should behave (Lawrence Meier Friedman, 1998: 21). So what is meant by substance is the rules, norms and patterns of real human behaviour that are in the system. In connection with the corruption case that occurred, law enforcers in carrying out law enforcement are only oriented to legal certainty, not legal justice. It can be seen that from the corruption case, investigators, public prosecutors and judges only ensnare perpetrators of criminal acts committed by individuals or individuals, while other actors, namely entities or corporations or companies are not touched at all. Whereas in the case of corruption, there are actors who are individuals, there is also the involvement of bodies or corporations or companies. The treatment of law enforcement actions in this case when viewed from the system in force in Indonesia is indeed not wrong. Because the system we use in Indonesia is a civil law system, where the legal basis for resolving a case or case must be based on a written law or law. If the law does not state it as a violation, then the act will not be processed. But on the other hand, if the law says it is an act that violates, it will be processed by law. The question is why do law enforcers or law enforcement officers prioritize legal certainty over justice. This is inseparable

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from the history of the development of the legal system in Indonesia. We know that the Indonesian state before independence on August 17, 1945, had been colonized by the Dutch colonialists for three and a half centuries. The legal system used in the Netherlands and its colonies called the Dutch East Indies is the Roman-German legal system or better known as the Civil Law System (Satjipto Rahardjo, 1991: 235). As is well known, Europe itself has its history of law and underlying philosophies. So the schools that developed in Europe could also have an effect on the thought of legal philosophy in the Netherlands. In the tradition of the Civil Law system, the law is written (Satijpto Rahardjo, 2006: 164), and made by the legislature (legislative). This law is used as the basis for resolving a case or case in court. The law is the only source of law and outside the law, there is no law. In this system, judges are only a sub-sometime automated and case decisions are only based on the law (R. Suroso, 2013: 87).

Then after Indonesia's independence in the period 1945 until now, Indonesia has not yet had its well-established law, so the legal norms inherited from the Dutch Colonial are still being used while adapting to the nature of independence. The basis for the use of this law is Article II of the Transitional Rules of the 1945 Constitution, which states that "All existing state bodies and regulations are still in effect immediately, as long as new ones have not been promulgated according to this Constitution". This is done so that there is no legal vacuum. At that time it can be said that the influence of Dutch law, namely the civil law system, was still very strong.

From the description above, when it is associated with criminal law enforcement in Indonesia, it is very clear that it is influenced by the positivism philosophy that emerged in western countries or Continental European countries that use the Civil Law System. This is because the basic rules in the settlement of criminal acts still use the Criminal Code (KUHP) which is a translation of Wet Boek Van Strafrecht (WVS) with the principle of concordance. Indeed, this Criminal Code has undergone several changes to suit the nature of independence, but the spirit of the Criminal Code remains a liberal-individualism culture which is very different from the culture of Indonesian society. As a result, in the enforcement of criminal law, there are many injustices. In addition, our legal education still uses a curriculum that produces law graduates who only master the science of law, as a result, if you become a law enforcer you are only a mouthpiece of the law and what you are pursuing is only legal certainty without paying attention to the value of community justice. Such conditions will run continuously, of course not. Efforts need to be made to overcome this.

Related to law enforcement in the field of corruption is also inseparable from the main rules such as the Criminal Code. The enforcement of criminal law in Indonesia is influenced by the philosophy of positivism, where the legal system used is the Civil Law System, that the main

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source of law is the law. The main goal of the civil law system is not justice but legal certainty. Given the very strong influence of this system on law enforcers, in resolving cases or cases, it is very important to prioritize the nature of being against the formal law. If the law does not explicitly state that an act is a crime, then no law has been violated. Thus, he will be free from punishment. This is by the principle of legality (Article 1 paragraph 1 of the Criminal Code) which is known as Nullum Delictum Nulla Poena Sine Praevia Lege Poenali. There are many cases or cases that are sociologically detrimental to the community (when viewed from the nature of being against material law), but juridically they do not violate the law or laws (the case of forest logging carried out by Adelinlis who was acquitted in the Riau District Court), and the case of Ariel Peterpen and Luna Maya who committed adultery but was not touched by the law, what was followed up was only a violation of the Information and Electronic Transactions Law and the Pornography Law. In addition, there are many criminal cases or cases handled by law enforcement officers whose losses were not large, such as the case of mbok Rasminah (MA Decision No. 653 K/Pid/2011), the case of mbok Minah, the case of the sandal thief (Bulletin of the Commission). Judicial, 2012, Volume VI, No. 4 January-February: 9) and others. Indeed, legally, these cases can be charged with the law (KUHP), but if this case is processed according to existing regulations, it will have a wide impact, including a sense of injustice in the community. ", Penitentiary is filled with inmates of minor cases and others.

From the provisions in the Corruption Law, legal subjects are individuals and entities or corporations or companies, but why if there is a corruption case where the perpetrator is only an individual, the company or corporation should also be involved in the crime. Regarding criminal acts committed by entities or companies, there are several issues that need to be questioned, namely 1) whether an entity or company can become a criminal act, because the agency or company cannot act alone except through its management or employees?, 2) in the matter of how the actions committed by the company personnel can be subject to criminal liability only to the company, or in other words in terms of how the liability is not imposed on the company but only on company personnel or in terms of how the liability is imposed either on the company or on company personnel , 3) what teachings or doctrines or theories can be used as the basis for justification to be able to impose criminal responsibility on the agency or company, 4) What are the forms of criminal sanctions that can be imposed on the agency or company. Furthermore, regarding the problem of the criminal formulation system and punishment in Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 there are several things that the author needs to convey, namely:

1. The use of specific minimum criminal threats for this crime, namely in Articles 2, 3, 5, 6, 7,

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8, 9, 10, 11, 12 The formulation of this minimum criminal threat will be a problem, because it is not accompanied by criminal rules or guidelines to apply this specific minimum penalty. With the existence of a special minimum threat that deviates from the Criminal Code system, legislators must make special rules in their application. This is in accordance with the provisions in Article 103 of the Criminal Code. In the minimum special threats that exist in Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 in the article mentioned above will cause problems because from the point of view of the criminal system, the inclusion of the number of criminal sanctions/threats (minimum/maximum) in the formulation of offenses (special rules) is only one of the sub-systems of the criminal system. This means that a minimum criminal threat cannot simply be applied only by being included in the formulation of the offense. To be implemented there must be another sub-system that regulates it. For example in Law no. 15 of 2003 in conjunction with Perpu No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism which states that the imposition of a special minimum sentence does not apply to perpetrators under the age of 18 (eighteen) years. The Corruption Law also does not stipulate whether the minimum sentence can be commuted (in the case of mitigating factors) or aggravated (in the event that there are aggravating factors).

2. The system for formulating sanctions in Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 uses the cumulative system in Articles 2, 6, 8, 9, 10, 12, and uses the cumulative and alternative systems in Articles 3, 5, 7, 11, 13. The use of the cumulative system will find it difficult to implement if the perpetrator is a body or corporation. Can a body or corporation be sentenced to imprisonment or imprisonment and a fine? In addition, the cumulative sanctions formulation system contains weaknesses because it is imperative and rigid, the judges in applying the sanctions do not have many choices.

3. In the Corruption Law, the main types of punishment used are imprisonment and fines. In the application of sanctions against individual perpetrators, it can be done, because people can be imprisoned and can be fined for paying a certain amount of money. This includes if the fine cannot be paid, it can be replaced with imprisonment as regulated in Article 30 of the Criminal Code. However, if the body or corporation or company is the perpetrator of a crime in the corruption sector, it can be fined a certain amount of money, but cannot be imprisoned. Furthermore, what if the body or corporation cannot pay a certain amount of money, can it be replaced with imprisonment? This is not regulated in either the Criminal Code or the Anti-Corruption Law.

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IV. Weaknesses in the Legal Structure

Legal structure is the structure of a system is its skeletal framework; it is the permanent shape, the institutionsl body of the system, the though, rigid bones that keep the process flowing within bounds (Larence Meier Friedman, 1998: 21). Namely the framework or framework, the part that survives, the part that gives a kind of shape and limitation to the whole (Jaenal Aripin, 2008: 117). The legal structure or legal institution is referred to as a structural system or institution that determines whether or not the law can be implemented properly. Thus, what is included in the legal structure are law enforcement agencies in the context of criminal acts of corruption, namely investigators, public prosecutors (Prosecutors), tax investigators and breaker criminal acts (Judges) and Correctional Institutions (Lapas).

In handling corruption cases related to entities or corporations that have met sufficient evidence, there are obstacles, namely investigators and public prosecutors are reluctant or do not dare to delegate corporate crime cases to court because of difficulties in formulating indictments. Even if there are several cases that try to ensnare corporations, often the decisions are released on the pretext that the corporate entity was not indicted.

V. Weaknesses in Legal Culture

What is meant by legal culture according to Lawrence Meier Friedman is the system of their beliefs, values, ideas, and expectations (Lawrence Meier Friedman, 1998: 20). So according to Friedman, legal culture is a human attitude towards the law and the legal system-beliefs, values, thoughts, and expectations. Or in other words, legal culture is the atmosphere of social thought and social forces that determine how the law is used, avoided or abused. Without a legal culture, the legal system itself is powerless, like a dead fish lying in a basket, and includes opinions, habits, ways of thinking and ways of acting, both from law enforcers themselves and from members of the community. Regarding the issue of corruption related to tax collection to the public, this is an interesting statement from the mass organization Nahdlotul Ulama (NU) at the National Deliberation and the Nahdlotul Ulama (NU) Grand Conference at the Kempek Palimanan Islamic Boarding School, Cirebon on September 17, 2012 resulting in a recommendation, among others, concerning the need for seriousness in eradicating corruption and support for threatening the death penalty for corruptors. In addition, he also stated that he would boycott tax collection if taxes continue to be corrupted by the tax apparatus. If taxes are used for the benefit of the people and there are improvements to cover the leakage of tax revenues, Nahdlotul Ulama (NU) will support the Government. It was stated by the General Chairperson of PBNU Said Aqil Siroj that the obligation to pay taxes does not exist in Islamic

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law, there is an obligation to pay zakat which is obligatory. However, Muslims have to pay taxes because they have to obey the government, tax collection is allowed as long as it is for building the country (Widi Widodo, 2019: 1-3). This statement from one of the largest mass organizations in Indonesia needs to be considered, because it has a very large impact on tax collection. Therefore, it is necessary to improve the management of this tax better. Internally, the Directorate General of Taxes needs strict supervision of tax officers, so that there should be no bribery from taxpayers in order to reduce the amount of tax that should be paid. In practice, it is often the case or a lot of tax calculations are carried out by taxpayers (because of the self-assessment system, namely calculating their own taxes) by calculating as little as possible, with the hope that if there is control from the tax officer it can be used for negotiations. This kind of condition can be used to play from irresponsible parties for personal gain. Or it could be in another way, for example, the taxpayer is given the right to file an objection regarding the amount of tax that is his obligation. This condition can also be used by tax officials to play with taxpayers. This is reminiscent of the cases handled by Gaius Tambunan who was ultimately imprisoned for 12 years.

Furthermore, if the tax authorities are good, able to improve supervision or have improved the system and have also eliminated tax leakage, automatically citizens will be compelled to comply with paying taxes? other agencies?, then what about law enforcement for those who have violated tax regulations and so on. Things like that can influence a person or taxpayer to pay taxes. Then what about the taxpayers themselves, whether there is awareness to pay taxes or is there still coercion that must be done by the government.

From the taxpayers themselves, it is necessary to raise awareness of the importance of taxes for the community or the state. One way that can be done is to build a conducive climate to foster taxpayers willing to fulfill their tax obligations voluntarily. There are several theories or ways to foster tax compliance, namely, first, in order to achieve tax revenue, a strict system is needed, meaning that the Directorate General of Taxes must implement and enforce tax rules strictly. So in this case law enforcement must be done properly. The second is an economic psychology approach in increasing tax compliance. Taxpayers are encouraged to obey not because they are afraid of the sanctions imposed on them if they evade paying taxes, but because they are morally responsible for developing the country. Ease of carrying out tax obligations is given to taxpayers (Turwanto, undated: 1-4). There are several countries in Europe, including Sweden, Denmark, Finland, Norway where members of the public are obedient to pay taxes even though the taxes are quite high. This is because in the country health services, education, infrastructure and other public services are well guaranteed. And even in Sweden the affairs of citizens from birth (civil

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registration), marriage to death and others are all covered by the tax authorities. The state provides high standards for its citizens so that people do not hesitate and are happy to pay taxes (Turwanto, und: 4-5).

For the Indonesian state, in order for tax collection to run smoothly, it is necessary to learn or perhaps adopt the system that applies in the countries mentioned above by improving the quality of health services, education, providing adequate infrastructure, ease of doing business, simplicity of the tax system, transparency and public services others so that people really feel prosperous.

VI. WEAKNESSES IN PROCEDURAL LAW (FORMAL LAW)

Until now, there are many laws that state entities or corporations or companies as legal subjects or perpetrators, but the regulation regarding the actions of the agency or corporation or company as the perpetrator or legal subject is not yet clear, including the regulation regarding the legal subject committing a crime among others, Law no. 8 of 1995 concerning the Capital Market, Act on Psychotropics Law. No. 5 of 1997, the Narcotics Law Act. No. 22 of 1997, the Law on the Prohibition of Monopoly and Unfair Business Competition Law. No. 5 of 1999, Law on Taxation Law. No. 28 of 2007 in conjunction with Law. No. 16 of 2009, the Corruption Crime Act. No. 31 of 1999 in conjunction with Law. No. 20 of 2001, the Money Laundering Act. No. 8 of 2010. All of these laws have recognized that entities or corporations or companies are legal subjects and can commit criminal acts.

The procedural law has not yet been regulated. In view of this, the procedural law arrangements follow Law no. 8 of 1981 concerning the Criminal Procedure Code. Criminal Procedure Law as regulated in Law no. 8 of 1981 seems to only be aimed at the perpetrators of criminal acts only individuals. For perpetrators of corporate or corporate crimes, it will be difficult. This can be seen in the provisions contained in Article 143 paragraph (2) which states that:

The Public Prosecutor shall make an indictment containing the date and signed and containing:

> a. Full name, place of birth, age or date of birth, gender, nationality, place of residence, religion and occupation of the suspect;
>
> b. A detailed, clear and complete description of the criminal act charged with mentioning the time and place where the crime was committed.

From the provisions in the article, some identities are not suitable to be addressed to entities or corporations or companies as perpetrators of criminal acts, for example gender and religion. Seeing such provisions, according to Artidjo AlKostar: "to trace the basis for the claim for

corporate responsibility, one can see the Articles of Association / Bylaws of the Limited Liability Company Law, the Foundation Law and so on which contain the goals and mission of the corporation" (Artidjo Alkostar In Ahmad Drajad, 2017: 4). This must be understood further by law enforcers so that entities or corporations as perpetrators of tax crimes can be made defendants and prosecuted in court.

In the Corruption Crime Act, namely Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 in Article 20 has regulated criminal acts of corruption with corporate or corporate actors, but it seems that it is still considered not so clear. Article 20 of Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 states that:

1. In the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal charges and penalties may be made against the corporation and or its management.
2. A criminal act of corruption is committed by a corporation if the crime is committed by people, either based on a work relationship or based on other relationships, acting within the corporate environment, either individually or jointly.
3. In the event that criminal charges are made against a corporation, the corporation continues to be represented by the management.
4. The management representing the corporation as referred to in paragraph (3) may be represented by another person
5. The judge may order the management of the corporation to appear in person in court and may also order that the management be brought before a court session.
6. In the event that a criminal charge is made against a corporation, the summons to appear and the submission of the summons shall be submitted to the management at the management's residence or at the management's office.
7. The principal punishment that can be imposed on corporations is only a fine, with the maximum sentence being added by 1/3 (one third).

The unregulated procedural law in the Criminal Procedure Code is an obstacle in eradicating corruption against corporate or agency actors. This is recognized by the Supreme Court, where several Supreme Court judges have complained that there are still few legal rules, both material law and procedural law which clearly regulates criminal acts against corporations (Ahmad Drajad, undated: 6). Related to this, Artidjo Alkostar said that so far it is still a question among judges that the laws and regulations do allow corporations to be convicted in corruption cases, but the rules are still unclear. There are weaknesses in our procedural law. If a prison sentence, who is responsible, the President Director or who?, what if there

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Of the several laws whose legal subjects are individuals as well as entities or corporations, the most complete regulation governing bodies or corporations is Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption and Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. However, from the two laws, the procedural law is not yet clear. The Procedural Law of the Act mentioned above in the event of a criminal act using Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHAP.

In the course of time, that the subject of corporate law has been regulated in various laws and criminal acts committed by corporations, the modus operandi tends to increase and is complex, causing difficulties in determining criminal liability and so that Investigators and Public Prosecutors do not hesitate to ensnare bodies or corporations. as a criminal, the Attorney General of the Republic of Indonesia issued Regulation no. PER-28/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects. The purpose of this regulation is as a guideline for handling cases at the stage of investigation, prosecution and implementation of court decisions in handling criminal cases with corporate legal subjects against the Management, Corporations and/or Management and Corporations. Meanwhile, the purpose of this regulation is to be a guide in handling criminal cases with corporate legal subjects, seeking completion of the handling of criminal cases with corporate legal subjects, optimizing additional criminal charges against corporate legal subjects, in accordance with statutory regulations. This regulation regulates: criteria for actions in handling criminal cases with corporate legal subjects, investigations and investigations, prosecutions, implementation of court decisions and handling of assets or assets. This regulation is complete enough to investigate and prosecute perpetrators of corporate or corporate crimes, but there is no guarantee that the prosecution of these crimes will be accepted by the panel of judges.

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The emergence of the Attorney General's Regulation does not guarantee that the corporation is actually a defendant in a criminal case, in which many cases occur, the KPK and the Prosecutor's Office only insert corporate responsibility in the indictment from individual defendants. In view of this, the Supreme Court Regulation (PERMA) No. 13 of 2016 concerning Procedures for Handling Criminal Acts by Corporations. This regulation serves as a guide for law enforcement officers and fills legal voids related to procedures for handling certain crimes carried out by corporations or their management.

In Perma No. 13 of 2016 contains several principles that must be known by law enforcement officers when handling criminal acts allegedly committed by corporate and/or corporate management. The principles are (Surya Jaya, 2017: 1-5):

1. The process of summoning and examining the corporation and/or its management as suspects. This summons contains: the name of the corporation; domicile; corporate nationality; corporate status in criminal cases (witness/suspect/defendant); time and place of inspection; summary of alleged criminal events.
2. Terms of the indictment. The form of the indictment is regulated in Article 12, namely the form of the indictment referring to Article 143 paragraph (2) with adjustments to the contents of the indictment containing: name of the corporation, place, date of establishment and/or number of articles of association/deed of establishment/regulations/documents/agreements and amendments Lastly, domicile, nationality of the corporation, type of corporation, form of activity/business and identity of the representing management. In addition, it contains a detailed, clear and complete description of the criminal act charged with mentioning the time and place where the crime was committed.
3. There is a separation of liability or criminal wrongdoing between the corporation and its management. In imposing a crime against a corporation, the judge may assess the corporation's faults, including:

   a. The corporation may obtain profits or benefits from the crime or the crime is committed for the benefit of the corporation;

   b. Corporations allow criminal acts to occur; or

   c. The corporation does not take the necessary steps to prevent, prevent a bigger impact and ensure compliance with applicable legal provisions in order to avoid the occurrence of criminal acts.

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In the event that one or more corporate management quits or dies, it does not result in the loss of corporate criminal liability.

4. The regulation of corporate criminal sanctions, namely the main crime in the form of fines and additional penalties in accordance with the applicable law. For example, replacement money, company closure, compensation and restitution.
5. The proof system for handling corporate crimes still refers to the Criminal Procedure Code (UU. No. 8 of 1981) and certain laws that specifically regulate the evidentiary system. The statement of the corporate management is legal evidence.

With the issuance of Perma No. 13 of 2016 is an improvement or reconstruction of the procedural law concerning cases or criminal acts involving corporations as the perpetrators. However, this repair or reconstruction still has many shortcomings, among others, it can be seen that most of what is regulated in the Perma is of a formal procedural nature, such as technical examinations of corporations in courts, formats of summons against corporations, formats of indictments against corporations, and formats of decisions against corporations. While there are several cases that can be processed in court without such a procedure, such as the case of PT. Giri Jaladha Wana. It would be better if the regulation had substance, for example when it was said that a corporation could be held criminally responsible and when a corporation could not be held criminally accountable, it is also necessary to clarify that a corporation that is a legal entity and a corporation that is not a legal entity will have different effects. In addition, there may also be overlaps between regulations with one another, namely between the Regulation of the Attorney General of the Republic of Indonesia Number: PER-028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects that apply internally and the Supreme Court Regulations. No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations which applies as a whole from all law enforcers. In view of this, what needs to be considered is the similarity of perspectives between law enforcers in dealing with corporate crimes. In dealing with corporate crimes, it must be separated between the criminal responsibility of the management personally or the corporation/company, it should be noted whether he as a manager takes action on the orders of the company or he wants to take advantage of the company for his personal interests to commit a crime. It also includes attention to the actions or actions of the new management and the old management when the new management does not know about the crimes committed by the old management. This is done so that the new management is not associated with criminal acts committed by the old management.

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In the author's opinion, in addition to the weaknesses in the regulations, it is also necessary to review the status of these regulations, they should not be in the form of a Supreme Court Regulation (Perma) but be upgraded to become a law so that it can bind all parties, especially law enforcers. In practice, there are several Supreme Court Regulations (Perma) which are not obeyed by the parties concerned, such as Perma No. 02 of 2012 concerning Adjustment of Limits for Minor Crimes and the Amount of Fines in the Criminal Code. Where the Perma is not obeyed by the District Court in handling cases where the loss value is below Rp. 2,500,000.00 (two million five hundred thousand rupiah) (Bambang Ali Kusumo, 2014: 1 – 8). To change from the Perma to this Law, the Government can coordinate with the Supreme Court to discuss the material or content of the desired law and so on.

VII. CONCLUSION

1. In the formulation of a criminal act of corruption, the perpetrators are individuals and legal entities or corporations. Individuals can be civil servants or non-civil servants. The main element of corruption is the loss of state finances or the state economy. Corruption is an extraordinary crime or is called an extra ordinary crime. In view of this, criminal acts of corruption are subject to criminal sanctions with minimal threats. And this threat must be followed by law enforcement officers.
2. In law enforcement against corporations on corruption, there are several factors that hinder it, namely the legal substance factor, the legal structure factor, the cultural factor and the procedural law factor.

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